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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Cable Television )  
Consumer Protection and Competition )  
Act of 1992 )  
 )  
Rate Regulation )

MM Docket No. 92-266

To: The Commission

**OPPOSITION OF**

***VIDEOMAKER MAGAZINE***

**TO PETITIONS FOR RECONSIDERATION FILED BY  
CONTINENTAL CABLEVISION, INC., THE CENTER FOR MEDIA  
EDUCATION, CABLEVISION SYSTEM CORPORATION, COMCAST  
CABLE AND BOOTH AMERICAN**

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July 21, 1993

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TO PETITIONS FOR RECONSIDERATION FILED BY  
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EDUCATION, CABLEVISION SYSTEM CORPORATION,  
COMCAST CABLE AND BOOTH AMERICAN**

*Videomaker Magazine ("Videomaker")* hereby submits this Opposition to the Petitions for Reconsideration filed by Continental Cablevision Inc., The Center for Media Education, Cablevision System Corporation, Comcast Cable and Booth American. Contrary to the goals of the Commission and of the Cable Television Act of 1992, the relief requested by these parties works against the public's increasing need for genuine outlets for diverse sources of video programming.

**Potential for Diverse New Programming**

Because of developments in consumer video technology over the past two decades, there are more independent producers of video programming today, and potential producers, than at any time previous. Consumer camcorders were introduced less than a decade ago, and already 20 million Americans own them.

*Videomaker* was launched in the late '80s to serve these camcorder owners. The magazine's circulation of 75,000 is further testimony to the public's desire to produce programming.

Although most camcorder owners are interested simply in making home movies, many of them are aspiring independent producers of television programs. The tightly controlled broadcast and cablecast marketplace, however, has always stifled their aspirations. They can make special interest productions and try to sell them on a tape by tape basis, but this method is not competitive with cable TV distribution. The tape product costs the viewer many time more than an equivalent program on, say, a pay-per-view channel. This limits the ability of independent producers to reach their customers competitively. There are very few television networks and thousands of producers. Consequently, competition is fierce for an independent producer who lives outside the center of the programming industry, New York or Los Angeles.

There is a clear need to increase the options for distribution of video programs. With leased access at reasonable rates we are confident that thousands of small video business entrepreneurs will lease the channels and produce programs for small and medium-sized audiences. They will enter the television marketplace just as they entered the wedding video market. Ten years ago you could not find a town with a wedding videographer. Today you can not find a town without one. The result will be a new wealth of diverse programming, and that serves the public interest.

Our company has become so inspired by the prospects of the leased access provisions that we are launching another publication to serve the development of this new leased access industry tentatively entitled "*Access to the Super Highway*." If the video entrepreneurs take hold of the real opportunities that reasonable leased access would present, we can all expect far better than infomercials and pornography shows out of the leased channels.

### **Rebuttals**

However, we feel some of the arguments for reconsideration of the leased access provisions may undermine their success.

We support Continental Cablevision Inc.'s ("Continental") concern about infomercial providers and The Center for Media Education's concern about home shopping and infomercials. The likelihood exists that programs in this category could displace other programming that contributes to more diversity. However, we oppose the solution suggested by Continental where it suggests that the cable operator should have the discretion to de-average rates and establish reasonable rates for different day parts. We concur that cable operators should be able to establish reasonable rates for different day parts, so long as those rates do not exceed the highest implicit rate calculated by prorating the monthly maximum implemented by the Commission. There is nothing in the 1992 Cable Act that would prevent cable operators from offering discounts for undesirable day parts. The rates as determined by the implicit rate formula are already so high that a

marketplace for leased capacity may never develop. It would be counter-productive to raise them in any way.

Continental goes on to suggest restricting commercial access to those seeking to program an entire channel. This idea undermines "assure(ing) that the widest possible diversity of information sources are made available to the public from cable systems." Very few independent producers can produce enough material to program a channel full time. Our preliminary research indicates that part time lessees are the only lessees on many cable systems. The elimination of the category of part time users would reduce the effectiveness of the leased access provisions. From our perspective of watching the small format video industry develop, we are absolutely convinced that there are thousands of producers that would enter the leased access market, if they could each lease an hour a week. Confining leased access to full channels would be as effective as attempting to increase railroad use by allowing only those to ride on a train who build their own.

We oppose the petition for reconsideration of Cablevision System Corporation ("Cablevision"). In their petition (pg. 13) they suggest that leasing a channel part-time "will render a channel unavailable for full time use." The intention of Congress is to provide a "genuine outlet" for programs. When the outlet becomes genuine, the remaining capacity of any part time channel will be full of other part time lessee's programs. If for some reason there is a very small number of part time users, there is nothing to prevent the cable operator from placing the lessee's program on any other full time channel. It is a common

practice of cable operators to mix programming from different sources (network or local) on the same channel. Cablevision's specific recommendation is to adopt a rate of "a penny per subscriber per hour for leased access use." (pg. 16) This suggestion takes on a different meaning when it is converted to a rate per thousand subscribers per hour. In their example of a system with 10,000 subscribers, with a rate of \$100, the rate per thousand subscribers is \$10 (ten dollars). Converting the Commission's example of an implicit fee of \$0.50 per subscriber per month to a rate per hour per thousand subscribers result is \$0.69. In essence Cablevision System Corporation is suggesting that the rates adopted by the Commission be raised by almost 1500% (fifteen hundred percent) or a multiple of 15 (fifteen times). We find it hard to believe that Cablevision's rates would not discourage leased access use. We would doubt that Cablevision is leasing all of the channels

programming. If a TV program market, that is independent from advertising, is ever to develop, pay-per-view will be the mechanism for it to succeed. The phrase "pay-per-view" isn't mentioned in the 1992 Cable Act, yet it is implied by referring to billing and collection. The Commission should consider adopting specific rules on billing and collection, without which, entrepreneurs could be closed out of the paid program market until a disputes arises. Since there are no viable alternatives for a leased premium channel or impulse pay-per-view, leased access without cable operator-supplied billing and collection services would not result in a "genuine outlet."

Finally, we oppose the petition of Booth American in which they suggest that least access be confined to leasing complete channels for the same reasons outlined above.

### **Additional Recommendations**

The placement of a lessee's program or entire channel should not be left up to the cable operator. A lessee may then find their channel available on a tier that very few subscribers will receive. A part time lessee with one program may find the cable operator refusing to lease desirable time slots (i.e. prime time) and in extreme cases, a lessee's program may be broadcast at 3:00 AM. The placement of a lessee's programming is crucial to its success. An uncooperative cable operator may effectively banish a lessee to a channel or time slot that will reduce the lessee's chances of success to that of a "merchant selling sand in a desert." Sand is valuable in hour glasses, but not in deserts.

Under current regulations, there is no way a potential lessee, a channel broker or a publisher, such as *Videomaker*, can gain access to the implicit rates that the cable operators submitted to the Commission. This lack of information will have an adverse impact in establishing a channel acquisition mechanism. In addition, it will make it virtually impossible for a complaint-filing lessee to make a clear and convincing complaint.

We urge the Commission to reconsider the adoption of these aspects of the leased access provisions. Without these changes it is unlikely that many independent producers will be successful in entering the marketplace. Independent producers need a genuine outlet on cable TV.